

Payment Systems and Services Bill 2017

Payment Systems and Services Bill, 2017

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ENTITLED

THE PAYMENT SYSTEMS AND SERVICES ACT, 2017

AN ACT to amend and consolidate the laws relating to payment services to regulate institutions which carry on payment service business and to provide for related matters.

PASSED by Parliament and assented to by the President.....

Preliminary Matters

Application of this Act

- 1.** This Act applies to
 - (a) banks
 - (b) specialised deposit taking institutions
 - (c) dedicated electronic money issuers
 - (d) Payment Service Providers
 - (e) affiliates of banks, specialised deposit-taking institutions and financial holding companies
 - (f) agents of banks, specialised deposit-taking institutions, dedicated electronic money issuers and Payment Service Providers

Application of Relevant Enactments

2. This Act shall be read together with the Bank of Ghana Act 2002 (Act 612), the Companies Act, 1963 (Act 179) Banks and Specialised Deposit-Taking Institutions Act 2016, Electronic Transactions Act 2008 (Act 772) and Bills of Exchange Act 1961 (Act 55) and should not except otherwise provided in this Act derogate from the Bank of Ghana Act 2002, (Act 612).

Functions of the Bank of Ghana

3. (1) The Bank of Ghana shall have overall supervisory and regulatory authority in all matters relating to payment, clearing and settlement systems as enshrined in the Bank of Ghana Act 2002 (Act 612) Sections 4(d) (e) (h).

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(2) For the purpose of subsection (1), the Bank of Ghana is responsible for:

- a) promoting the safety and soundness of all payment, clearing and settlement systems, regulating issuance of electronic money, payment instrument, payment service providers and electronic commerce platforms;
- b) promoting financial inclusion through the supervision of payment and settlement systems without risking the safety and soundness of the financial system;
- c) facilitating or establishing Financial Market Infrastructures in the interest of the public;
- d) ensuring financial services are extended beyond traditional branch-based channels to the domain of everyday transactions;
- e) ensuring that electronic money is only provided by authorised financial institutions regulated under the Banks and Specialised Deposit-Taking Institutions Act 2016 and duly licensed non-bank entities which are engaged solely in the business of electronic money and activities related or incidental to the business of electronic money;
- f) ensuring that customers of electronic money issuers benefit from adequate transparency, fair treatment and effective recourse mechanism;
- g) dealing with unlawful or improper practices of payment service providers and electronic money issuers;
- h) Formulating, monitoring and reviewing policies on the payment system;
- i) Determining general and individual payment conditions, standards, rules or procedures under this Act and any other implementing measures regarding a licensee or authorised person and its activities to ensure that conditions, standards, rules or procedures are applied;
- j) issuing authorisation to banks and specialised deposit-taking institutions;
- k) the issuance of licences to non-bank financial institutions;
- l) granting approval to foreign entities with respect to establishment of representative offices; and
- m) any other payment service or product the Bank may determine.

(3) The supervisory functions of the Bank under this Act shall be carried out through the supervisory structures established by the Bank

(4) The Bank of Ghana may authorise the heads of the supervisory structures or any other persons to do an act or exercise a power that the Bank considers appropriate in order to carry out the responsibilities of the Bank under this Act.

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(5) The Bank may appoint an authorised person to perform specified activities in relation to the payment and settlement systems in accordance with the Bank of Ghana Act, 2002 (Act 612).

Payment Systems Council

4. (1) The Bank may establish a Payment Systems Council in line with Section 3 sub section (5).

(2) The objective of the Council is to advise the Bank on the following:

- a) The regulation and oversight of the Payment System;
- b) The operational and technical standards;
- c) Any other matters affecting payment services, clearing and settlement of payments.

(3) The members of the Council other than the Governor and his alternate shall hold office for a period of four (4) years but are eligible for re-appointment.

Licensing and Authorisation of Payment Service Providers

Prohibition to operate as a Payment Service Provider

5. A non-bank body corporate shall not operate a payment system or provide a payment service without a payment system licence issued by the Bank in accordance with this Act.

Eligibility for Licensing or Authorising Payment Service Providers

6. A payment service provider that may be eligible to be licensed by the Bank shall have any of the following objects:

- a) Clearing of payment instructions among financial and non-financial institutions;
- b) Settling of obligations arising from the clearing of payment instructions;
- c) Transfer of funds from one account to another using any electronic means;
- d) Transfer of electronic money from one electronic device to the other;
- e) Provision of technological services to facilitate switching, routing, clearing, data management;
- f) Facilitation of interoperability of payment systems and services among payment systems providers;
- g) Provision of electronic payment services to the unbanked and under-banked population;
- h) Establishing a payment clearing house;
- i) Provision of financial communication network;

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- j) Issue of electronic payment instruments;
- k) Issue of prepaid cards, credit cards and debit cards;
- l) Payment system aggregation function;
- m) Provision of any electronic platform for payment or receipt of funds;
- n) Printing of non-cash paper payment instrument or;
- o) Any other object as may be prescribed by the Bank.

Application for a Payment System Licence

7. (1) A body corporate which intends to operate as a payment service provider shall apply in a prescribed form for a payment system licence.

(2) An application made under sub section (1) shall be accompanied by such information as may be prescribed by the Bank.

(3) An application under sub section (1) shall set out the nature and functionality of the proposed payment services that will be made available to customers and shall contain sufficient information to enable the Bank to evaluate the requirements. This information shall include:

- a) Information about the applicant and its business organization;
- b) A list of the current or proposed significant shareholders of the applicant and the percentages of shares owned or to be owned by each;
- c) Proposed payment services or products to be offered;
- d) A business plan and financial projections for its proposed payment services operations for the first five years indicating the intended initial geographical coverage of the service, including agent coverage where applicable as well as its expansion plan;
- e) Information on all bank accounts to be used in the conduct of payment services where applicable;
- f) A valid registration certificate obtained from the Data Protection Commission or any entity authorised by law to permit the entity to control data.

(4) An applicant shall be eligible to be licenced or remain licenced as a payment service provider provided that the applicant satisfies the requirements stipulated in sections (17) (19) (39) (41)

(5) There shall be at least a thirty percent (30%) equity participation of a Ghanaian company or person in any payment service business

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(6) Despite sub section (3), the Bank may reject the application for a license on any of the following grounds:

- a) The applicant or any of its significant owners has been convicted of a crime involving a financial transaction in any jurisdiction within the past 10 years or is a convicted felon;
- b) The application contains false or misleading information;
- c) The applicant fails to respond to a request from the Bank for additional information within ten (10) days of a second request for the same information;
- d) The documents submitted are incomplete or deceptive.

(7) The Bank may grant a licence when it is satisfied that the applicant has met the licensing criteria stipulated under this Act and any other requirement specified by the Bank.

(8) Within one hundred and twenty (120) calendar days following receipt of a complete application or where further information has been required, after receipt of such information, the Bank may either grant or refuse the application.

(9) The Bank may, where it grants a licence, impose such terms and conditions, as it may deem appropriate.

(10) Where an application is refused, the Bank may give reasons for the refusal.

(11) Subject to sub section (10), an applicant whose application is refused may re-apply if the deficiencies that formed the basis for refusal of the initial application have been rectified; the Bank may either grant or refuse the application.

Carrying on Payment Service Business without a Licence

8. (1) A body corporate who carries on the business of payment services without licence from the Bank commits an offence and shall be liable to a fine of not less than 2,000 penalty units and not more than 4000 penalty units or to a term of imprisonment not less than 4 years and not more than 7 years or both.

(2) A person who contravenes sub section (1) shall immediately cease the operations of payment services and seek licence from the Bank.

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Application for Payment Systems Authorisation

9. (1) A body corporate regulated under the Banks and Specialized Deposit-Taking Institutions Act 2016 shall not carry out the business of payment services without making an application for authorisation to the Bank.

(2) An application under sub-section (1) shall be in the prescribed form and shall set out the nature and functionality of the proposed payment services that will be made available to customers and shall contain sufficient information to enable the Bank evaluate the requirements.

(3) Despite sub-section (2) an application for authorisation to provide payment services shall contain:

- (a) Proposed payment services to be offered;
- (b) A business plan and financial projections for the first five years for its proposed payment services and indicating the intended areas of activities, initial geographical coverage of the service, including agent coverage where applicable, as well as its expansion over time;
- (c) Any other information that the Bank may require.

(4) An applicant shall be eligible to be authorised or remain authorised as a payment service provider provided that the applicant satisfies the requirements stipulated in sections (17) (19) (39) (41)

(5) Despite sub section (3), the Bank may reject the application for an authorisation on any of the following grounds:

- a) The applicant or any of its significant owners has been convicted of a crime involving a financial transaction in any jurisdiction within the past 10 years or is a convicted felon;
- b) The application contains false or misleading information;
- c) The applicant fails to respond to a request from the Bank for additional information within ten (10) days of a second request for the same information;
- d) The documents submitted are incomplete or deceptive

(6) The Bank shall grant or refuse an application for payment services authorisation within one hundred and twenty (120) calendar days from the date of receipt of complete application.

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Carrying on Payment Service Business without an Authorisation

10. (1) A body corporate who carries on the business of payment services without authorisation from the Bank commits an offence and each director shall be liable to a fine of not less than 500 penalty units and not more than 2000 penalty units or to a term of imprisonment not less than 2 years and not more than 4 years or both.

(2) A body corporate who contravenes sub section (1) shall immediately cease the operations of payment services and seek authorisation from the Bank.

Suspension of a Payment System Licence or Authorisation

11. (1) The Bank may suspend a payment system licence or authorisation where:

- a) it is satisfied that a payment service provider has failed to meet infrastructure or any other requirements prescribed by the Bank
- b) it is satisfied that the affairs of the payment service provider are being conducted in a manner that is detrimental to the interests of the payment system; or
- c) the payment service provider is directed to suspend services under any other law.

(2) Subject to sub section (1), the Bank may call upon a licensee or an authorised institution to show cause why the licence or authorisation shall not be suspended.

(3) Where the licensee or authorised institution fails to show cause to the satisfaction of the Bank, the Bank may suspend the licence or authorisation or make any other order as it may deem appropriate.

(4) The Bank shall take any action it deems fit against a person whose licence or authorisation is suspended to protect the interest of customers.

Revocation or Suspension of a License or Authorisation

12. (1) The Bank shall suspend a licence or authorisation under this Act where:

- a) any other licence or authorisation related to payment services or issuance of electronic money is revoked under any other law;
- b) the provider or electronic money issuer refuses to permit an inspection or provide information required by the Bank or otherwise in breach of this Act;
- c) the provider or electronic money issuer provides false or misleading information when applying for the licence or authorisation;

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- d) the provider or electronic money issuer fails to comply with the terms and conditions of the licence or authorisation;
- e) the provider or electronic money issuer engages in a pattern of unsafe or unsound practices that threaten its financial condition or is detrimental to the interests of users and other providers;
- f) the provider or electronic money issuer is insolvent under any law in Ghana or determined by a court of competent jurisdiction; or
- g) the provider or electronic money issuer ceases to carry on business in Ghana or goes into liquidation, is wound up, or is otherwise dissolved; or
- h) the provider or electronic money issuer does not issue electronic money or provide payment services within six (6) months beginning with the date on which the authorisation or licence took effect;
- i) the provider or electronic money issuer ceases to engage in business activity for more than six (6) months;
- j) the provider or electronic money issuer constitutes a threat to the stability of the payment system by continuing its electronic money or payment services business; or
- k) The suspension is desirable to protect the interests of consumers.

(2) Subject to sub-section (1), the Bank may issue a seven (7) days' notice calling upon a licensee or authorised institution to show cause why the licence or authorisation should not be permanently revoked.

(3) Where the licensee or the authorised institution fails to show cause to the satisfaction of the Bank, the Bank may revoke the licence or authorisation or make any other order as it may deem appropriate.

(4) A payment service provider or electronic money issuer whose licence or authorisation has been revoked under this Act may, within thirty (30) calendar days from the date on which the revocation is communicated, apply in writing to the Governor of the Bank for a review.

(5) A payment service provider or electronic money issuer shall arrange to pay its customers all their electronic monies held within ten (10) days upon a revocation of its licence or authorisation.

Publication of Notice of Revocation

13. Where a licence or authorisation is revoked under this part, the Bank shall:

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- a) within five (5) working days following the date of revocation publish a notice of revocation in newspapers of wide circulation in Ghana and at the Bank's website;
- b) take any other steps necessary to inform the general public of such revocation.

Prohibited Conduct for Payment Service Providers

14. (1) A payment service provider shall not engage in any act which is likely to:

- a) result in systemic risk; or
- b) prejudice the integrity, effectiveness or security of the payment system

(2) The Bank shall direct a payment service provider or a participant who has engaged in an act prohibited in sub section (1) to remedy the situation in such a manner as the Bank may deem appropriate.

(3) A person who fails to remedy the situation as directed by the Bank shall have the licence or authorisation revoked

Cessation to hold Office

15. (1) A director or key management personnel of a payment service provider shall cease to hold office, in case of

- a) bankruptcy;
- b) conviction for an offence involving fraud or dishonesty;
- c) removal from office by a competent authority; or
- d) unsound mind.

(2) A director or key management personnel of a payment service provider, whose licence or authorisation is revoked, shall not without the approval of the Bank act in the management of any other payment service provider.

(3) A director or key management who contravenes sub section (1) and (2) shall be liable to administrative penalty of 2000 penalty units

Capital Requirements

16. (1) A payment service provider shall maintain a minimum paid-up capital as may be prescribed by the Bank from time to time.

(2) A payment service provider which fails to maintain the required minimum paid-up capital as stipulated under sub section (1) shall:

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- a) Submit a plan to the Bank for approval as to how it intends to restore its paid-up capital to the required minimum level; and
- b) Pay to the Bank on each day that the deficiency continues as penalty one-half per mille, of the difference between the capital that the payment service provider should have maintained and the level of capital actually maintained by the payment service provider.

(3) The Bank may suspend the licence of payment service provider or take such other punitive action as it deems fit where the deficiency is not rectified within one hundred and twenty (120) calendar days after it has occurred.

(4) Each director and chief executive officer of the payment service provider which fails to comply with the minimum capital commits an offence and is liable on summary conviction to pay a fine not less than 1,500 penalty units but not exceeding 3,000 penalty units or imprisonment for a term not less than 4 years but not exceeding 7 years or both.

Governance Arrangements

17. (1) A payment service provider shall establish a board of directors with a minimum of five (5) members, at least three (3) of whom, including the chief executive officer, shall be resident in Ghana.

(2) The board of a payment service provider shall be responsible for strategic decisions, effective oversight, risk management, compliance and internal control functions.

(3) The board of a payment service provider shall adequately reflect the balance of interests represented by the payment service provider.

(4) A payment service provider shall provide the biographical information on the board of directors and key management personnel to the Bank.

(5) An individual in sub section (1) shall meet the fit and proper test and have the necessary experience and qualifications to perform the functions of that individual.

(6) A payment service provider shall provide an organisational structure showing span of control and lines of responsibility, decision making procedures, reporting and communication lines, systems for monitoring internal controls, and board oversight of the governance system.

(7) The key management personnel of a payment service provider shall be responsible for maintaining an effective system of operations with regard to payment services.

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(8) A payment service provider shall disclose to the Bank details of external auditors and any relation to the directors, key management personnel or shareholders.

(9) In the case of a bank or specialised deposit-taking institution, a sub-committee of the board shall be put in place to exercise oversight of the system; and a responsible officer designated to manage the operations.

Fees

18. (1) A body corporate licenced or authorised under this Act shall pay processing fee, license fee, annual renewal fee and any other fee that the Bank may by notice specify.

(2) These fees may be reviewed by the Bank from time to time.

Technology, Security and Controls

19. (1) A payment service provider shall have:

a) Appropriate and tested technology systems which shall have fraud monitoring tools.

b) Valid third-party certification from a reputable certification authority or body on compliance status with relevant standards as may be determined by the Bank.

c) A system which is capable of interoperating with other payment systems in the country when required.

(2) All transactions against customer accounts must be duly authorised by the account holder

(3) Amounts in excess of GH¢500.00, or as may be prescribed by the Bank shall have a two factor authentication medium determined by the Bank.

(4) Customers shall be notified of all transactions on their accounts through electronic notification or a physical receipt providing at least the following information:

a) Transaction amount;

b) Transaction type;

c) Any fees charged;

d) Unique transaction reference;

e) Date and time of transaction;

f) Identifying details of the recipient of an outbound transaction or of the sender of an inbound transaction.

(5) Settlement shall take place against pre-funded accounts at intervals prescribed by the Bank.

(6) A payment service provider shall ensure that the following minimum systems and controls are in place for its operation:

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- a) Sound and prudent management, administrative and accounting procedures and adequate internal control systems;
 - b) Appropriate security policies and measures intended to safeguard the integrity, authenticity, and confidentiality of data and operating processes;
 - c) Adequate business continuity capabilities and appropriate disaster recovery planning; and
 - d) Effective audit function to provide periodic review of the security control environment and critical systems.
- (7) The system should maintain a complete audit log of all user activities for at least 6 years.

Issuance of Electronic Money

Eligibility to carry on Electronic Money Business

20. (1) Subject to this Act, a person shall not carry on electronic money business or offer electronic money products or services in or from within the country unless that person is a body corporate formed under the laws of the country.

(2) A body corporate regulated under the Banks and Specialised Deposit-Taking Institutions Act 2016 and authorised under this Act or a Payment service provider or a Dedicated Electronic Money Issuer licensed under this Act may carry on electronic money business.

(3) A person who contravenes any provision for licence or authorisation as an electronic money issuer commits an offence and liable on conviction, and if that person is:

- a) a natural person, to a fine not less than 1500 penalty units but not exceeding 3,000 penalty units or imprisonment for a term not less than 4 years but not exceeding 7 years, or both; or
- b) a body corporate, to a fine of not less than 2500 penalty units and not more than 5,000 penalty units.

Requirement for authorisation of Electronic Money Issuers

21. (1) A body corporate regulated under the Banks and Specialised Deposit-Taking Institutions Act 2016 shall not carry out the business of electronic money issuance without authorisation from the Bank.

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- (2) An application under sub-section (1) shall be in the prescribed form and shall set out the nature and functionality of the proposed electronic money operations that will be made available to electronic money holders and shall contain sufficient information to enable the Bank to evaluate the requirements.
- (3) Despite sub-section (2) an application for authorisation to issue electronic money shall contain:
 - (a) Proposed electronic money services to be offered;
 - (b) A business plan and financial projections for the first five years for its proposed electronic money operations and indicating the intended areas of activities, initial geographical coverage of the service, including agent coverage, as well as its expansion over time; and
 - (c) Any other information that the Bank may require.
- (4) An applicant shall be eligible to be authorised or remain authorised as a payment service provider provided that the applicant satisfies the requirements stipulated in sections (17) (19) (39) (41)
- (5) The Bank shall grant or refuse an application for electronic money authorisation within one hundred and twenty (120) calendar days from the date of receipt of a complete application.
- (6) A body corporate who carries on the business of electronic money issuance without authorisation from the Bank commits an offence and shall be liable to a fine of not less than 2,000 penalty units not more than 4000 penalty units.
- (7) A person who contravenes sub section (6) shall immediately cease the issuance of electronic money and seek authorisation from the Bank.

Licensing of Dedicated Electronic Money Issuer

22. (1) A body corporate other than one regulated under the Banks and Specialised-Deposit-Taking Institutions Act 2016 seeking to issue electronic money, and possessing, if relevant, "no objections" from any other regulating body it may be affiliated to, shall make an application to the Bank for licensing to conduct business as dedicated electronic money issuer, in the form prescribed by the Bank.

- (2) Subject to sub section (1), the application shall contain:
 - a) Information about the applicant and its business organization;
 - b) A list of the current or proposed significant shareholders of the applicant and the percentages of shares owned or to be owned by each;
 - c) Proposed electronic money services or products to be offered;
 - d) A business plan and financial projections for its proposed electronic money operations for the first five years indicating the intended initial

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- geographical coverage of the service, including agent coverage, as well as its expansion plan;
- e) Information on all bank accounts to be used in the conduct of electronic money operations;
 - f) A valid registration certificate obtained from the Data Protection Commission or any entity authorized by law to permit the entity to control data;
 - g) Documentary evidence of capital of the proposed electronic money business including the original sources of funds and any other sources of funds; and
 - h) There shall be at least a thirty percent (30%) equity participation of a Ghanaian company or person in any electronic money business.
- (3) The Bank shall not authorise a person as a Dedicated Electronic Money Issuer unless the person complies with the following requirements:
- a) The person is established and incorporated as a limited liability company under the Companies Act, 1963 (Act 179);
 - b) The person shall include in its Regulation of Incorporation language to the effect that electronic money owed to their customers are purely held in trust and will not be encumbered in case of insolvency or liquidation of the Dedicated Electronic Money Issuer;
 - c) The significant owners and directors are fit and proper persons;
 - d) The person engages only in the business of electronic money and other activities related or incidental to the business of electronic money, such as money transfer or remittance.
 - e) A person engaged in activities not related or incidental to electronic money but seeking to be licensed to offer electronic money services or other electronic money products shall establish a separate entity duly incorporated exclusively for this purpose, which requires a licence under this Act as a Dedicated Electronic Money Issuer;
 - f) The person is financially sound;
 - g) Any other requirement that the Bank may prescribe.
- (4) Despite sub section (3), the Bank may reject the application for a license on any of the following grounds:
- a) The applicant or any of its significant owners has been convicted of a crime involving a financial transaction in any jurisdiction within the past 10 years or is a convicted felon;
 - b) The application contains false or misleading information;

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- c) The applicant fails to respond to a request from the Bank for additional information within ten (10) days of a second request for the same information;
 - d) The documents submitted are incomplete or deceptive.
- (5) The Bank shall grant or refuse a licence within one hundred and twenty (120) calendar days from receipt of the complete application.
- (6) A person who carries on the business of electronic money without a licence from the Bank commits an offence and is liable on summary conviction,
- a) In the case of a body corporate, to a fine not less than 2500 penalty units but not exceeding 5,000 penalty units;
 - b) In the case of an individual, to a fine not less than 1500 penalty units but not exceeding 3,000 penalty units, or to a term of imprisonment not less than 4 years but not more than 7 years.

Appeals Procedure for the refusal of Licence or Authorisation

- 23.** (1) An applicant whose application has been refused under this Act may within thirty (30) calendar days from the date on which the refusal is communicated, apply in writing to the Bank for a review
- (2) Where the applicant is dissatisfied with the outcome of the review under sub section (1), the applicant may in writing appeal to the Chief Justice.
 - (3) The Chief Justice shall constitute an adjudicative panel to review the decision of the Bank.
 - (4) An adjudicative panel constituted under sub-section (3) shall comprise :
 - a) A chairperson who is a judge not below the rank of a Justice of the court of Appeal, nominated by the Chief Justice.
 - b) One person with expert knowledge in payment systems with not less than 10 years relevant experience.
 - c) One member of the Institute of Chartered Accountants (Ghana) who has been in practice for not less than 10years.
 - (5) The Chief Justice shall appoint members of the adjudicative panel.
 - (6) The adjudicative panel shall adopt its own rules of procedure.
 - (7) An appeal against the decision of the adjudicative panel shall lie to the High Court.
 - (8) The expenses of the adjudicative panel including allowances of members of the adjudicative panel shall be borne equally by the Bank and the applicant.

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Validity and Renewal of Licence or Authorisation

24. (1) A licence or authorisation granted under this Act shall be valid for a period of five (5) years subject to annual renewal unless it is otherwise suspended or revoked.

(2) The holder of a licence or authorisation granted under this Act may within six months before the expiration of such licence or authorisation apply to the Bank for renewal.

(3) On receipt of an application under sub section (1), the Bank may renew the licence or authorisation upon submission of the following:

- a) Payment of renewal fee;
- b) Fulfillment of such terms and conditions as applicable for the grant of licence or authorisation;
- c) Tax Clearance Certificate;
- d) Evidence of meeting the Bank's requirements;
- e) Submission of the original existing certificate issued by the Bank; and
- f) Any other information that may be required by the Bank.

(3) The Bank may refuse to renew a licence or authorisation if it is satisfied that the applicant has failed to comply with the conditions contained in the previous licence or authorisation.

Issuance and Redeemability

25. (1) Electronic money accounts and transactions shall be denominated only in Ghana cedi.

(2) An electronic money issuer shall:

- a) Issue electronic money at par value on the receipt of funds.
- b) Upon request by the electronic money holder, redeem, at any moment and at par value, the monetary value of electronic money held.
- c) Pass-through not less than 80% or as may be determined by the Bank as it deems fit of the interest accrued, net of any fees or charges to electronic money holders.

(3) Despite sub section (1) prepaid cards denominated in foreign currency shall be in compliance with the Foreign Exchange Act, 2006 (Act 723)

(4) Despite sub section (2) (b), redemption may be subject to a fee if clearly stated in the contract between the electronic money issuer and electronic money holder.

(5) Fees and charges must be the standard applicable to the account type in question.

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(6) Any use of frivolous fees and charges or the invention of a new account type to hold electronic money float for the purposes of limiting interest below that of other account types is liable to pay to the Bank an administrative penalty of 3,000 penalty units.

(7) Fees and charges may also not exceed the interest income generated on the account such that the balance in the account falls below the total value of the part of the electronic money float held in the account.

(8) Despite sub section (2) (c) any amount in excess of the minimum of 80% interest or as prescribed by the Bank may be retained by the issuer of the electronic money.

(9) Interest generated on over-the-counter transactions which are not associated with a given customer account may be retained by the electronic money issuer.

(10) For purposes of transparency and accountability, interest shall be paid into a separate account (interest account) held in the name of the pooled account.

(11) Withdrawals from the interest account shall only be for distribution of interest.

(12) Interest accrued on electronic money floats shall be paid quarterly to the electronic money holders or as may be determined by the Bank.

(13) A dedicated electronic money issuer and payment service provider if applicable shall submit a proposal to the Bank for approval on how it intends to distribute the interest.

(14) Any electronic money issuer which fails to comply with the requirement under sub section (2) (c) shall pay to the Bank administrative penalty of 5,000 penalty units and have its licence suspended after one month of non-payment of interest.

Permissible Transactions

26. (1) Electronic money systems may be used for the following:

- a) Domestic payments;
- b) Domestic money transfers, including to and from bank accounts;
- c) Bulk transactions, including payments of salaries, benefits and pensions;
- d) Cash-in and cash-out transactions;
- e) Over-the-counter transactions;
- f) Inward international remittances in partnership with banks;
- g) Savings products in partnership with banks and specialised deposit-taking institutions authorised by the Bank;
- h) Credit products under-written by a duly licensed bank or specialised deposit-taking institution;
- i) Insurance products under-written by a duly licensed insurer;

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l) Any other transactions the Bank may prescribe.

(2) The Bank may, by notification, restrict the permissible transactions of electronic money issuer or payment service provider or remove the restrictions so imposed as it deems fit.

(3) Where a dedicated money issuer or a payment service provider intends to perform any activity under the Banks and Specialised Deposit-Taking Institutions Act 2016 then that activity shall be underwritten by a bank or specialised deposit-taking Institutions.

(4) In addition to issuing electronic money, dedicated electronic money issuer or payment service provider may engage in any of the following activities:

- a) The operation of payment systems, where the conditions of applicable rules, acts or notices are met;
- b) The provision of operational services and closely related ancillary services in respect of the issuing of electronic money;

Prohibited Activities

27. (1) Payment service provider or dedicated electronic money issuer which is not a bank or specialised deposit-taking institution shall not engage in any of the following activities:

- a) Banking business within the meaning of the Banks and Specialized Deposit Taking Institutions Act 2016;
- b) Any other activity prohibited by the Bank.

(2) Airtime shall not count as electronic money and as such cannot be used for permissible transactions under this Act.

(3) A payment service provider or a dedicated electronic money issuer who fails to comply with the provisions of sub section (1) and (2) is liable to pay to the Bank an administrative penalty of 3000 penalty units.

Accounts Types and Transaction Limits

28. (1) Customers' electronic money accounts are categorised using a risk-based approach to Know Your Customer as follows:

- a) **Minimum Know Your Customer accounts have** low transaction limits, low documentation requirements as specified in section 31 (2) (a) and subject to a maximum balance limit of GH¢1,000, an aggregate daily transaction limit of GH¢300 and an aggregate monthly transaction limit of GHS¢3,000.

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- b) **Medium Know Your Customer accounts** have intermediate transaction limits, documentation requirements as specified in section 31 (2) (b) and subject to a maximum balance limit of GH¢ 10,000, an aggregate daily transaction limit of GH¢ 2,000 and an aggregate monthly transaction limit of GH¢20,000.
- c) **Enhanced Know Your Customer accounts and Prepaid Cards** have high limits with bank grade account opening requirements as specified in section 31 (2) (c) and subject to a maximum balance limit of GH¢ 20,000, an aggregate daily transaction limit of GH¢5,000 and an aggregate monthly transaction limit of GH¢ 50,000.

(2) Prepaid cards shall be subject to a maximum balance limit of the cedi equivalent of US\$10,000.

(3) Merchant electronic money accounts are a separate category intended for companies that need to receive customer payments, make purchases from suppliers and/or pay salaries to employees in volumes higher than an Enhanced Know Your Customer account.

(4) Merchants' electronic money accounts shall be operated as follows:

- a) No limits on account balance, inward receipt of electronic payments, outward bulk transactions or transfers to and from a pre-registered bank account belonging to the merchant.
- b) An aggregate limit on cash-out of GH¢10,000 per day or as may be prescribed by the Bank.
- c) Merchant accounts belonging to banks and specialised deposit-taking institutions shall not be subject to any limits.
- d) Merchant accounts are permitted to perform outward bulk transactions such as salaries and benefits or other payments that may be prescribed by the Bank.

(5) The limits under this section may be varied by the Bank as it deems it fit.

(6) The aggregate balance and transaction of an electronic money account holder across all the electronic money accounts shall not exceed the limits stipulated for the account type.

(7) Where the customer has more than one account type, the applicable limit shall be the higher account type.

(8) Electronic money issuers are required to ensure that their systems are able to effectively enforce the permissible transactions limits.

(9) The transaction limits may be varied by the Bank as it deems fit.

(10) Over-the-counter transactions that do not involve the use of a customer electronic money account shall be permitted and subject to the following transaction limits:

- a) Where the customer presents acceptable identification as per section 31 (3), over-the-counter transactions shall be subject to a single transaction

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limit of GH¢100.00, an aggregate daily transaction limit of GH¢1,000.00 and an aggregate monthly transaction limit of GH¢ 3,000.00 or as may be prescribed by the Bank.

b) Where the customer does not present an acceptable identification, the customer shall be required to be introduced by customer with an acceptable identification.

c) Electronic money issuers in all instances of over the counter transactions based on introduction are required to capture under separate fields in their system at least the customer's name, date of birth, address, telephone number and the details of the identification of the one doing the introduction.

d) When a customer is introduced for over the counter transactions, the transactions shall be subject to a single transaction limit of GH¢200, an aggregate daily transaction limit of GH¢500, and a monthly limit of GH¢2,500 and may be varied by the Bank as it deems fit.

(11) An electronic money issuer who fails to comply with the prescribed transaction limit is liable to pay to the Bank an administrative penalty of 5,000 penalty units.

Dormant Accounts

29. (1) An electronic money account that has registered no transaction for a consecutive period of twelve (12) months shall be considered dormant.

(2) The electronic money issuer shall adhere to the following:

a) Notify the relevant customer through short messaging service not less than one month before the 12 month limit is reached that the account will be suspended unless there is some form of activity.

b) Block the account and permit no further transactions until reactivated by the customer, supported by verifiable identification.

c) Notify the customer within two (2) working days through short message service that the account is blocked and provide instructions on reactivation.

d) Terminate an account that is blocked for twelve (12) months without reactivation by the customer.

e) Transfer the balances of an account that has been terminated along with identifying information into a separate account with the float holding bank or other banks designated by the Bank for a period of not more than 3 years.

(3) Banks holding these accounts are required to invest these funds in Government instruments and retain ten (10%) percent while the electronic money issuer also retains ten percent (10%) of the interest earned.

(4) The remaining eighty percent (80%) of the interest earned on the investments of the terminated accounts shall be added to the principal.

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(5) All identifying information relating to the account and its closing balance shall be retained by the electronic money issuer and the bank for a period of not more than three (3) years.

(6) After a period of three (3) years has passed without claim from the original customer, the electronic money issuer shall transfer all such funds to the Bank or any designated institution by the Bank and retain all identifying information.

(7) In the case of mobile money in subsection (c) all outstanding electronic money balances may be dissociated from Mobile Station International Subscriber Directory Numbers.

(8) A Mobile Station International Subscriber Directory Number that is linked to an electronic money account shall be reassigned to a new customer only when the electronic money account is terminated.

(9) The treatment of dormant accounts shall comply with this Act and any other directive that the Bank may issue.

(10) Failure to comply with the provisions under this section shall be liable to pay to the Bank an administrative penalty of 5,000 penalty units..

Compliance Requirements

30. (1) A payment service provider where applicable shall put in place systems that have built-in control mechanisms for a complete audit trail. These control mechanisms include, but are not limited to:

- a) Complete records of electronic money accounts opened;
- b) Identifying electronic money users;
- c) Tracking and monitoring of all electronic money transactions undertaken by electronic money users, the individual and aggregate balances held by electronic money holders;
- d) Internal policies, procedures and accountability structures pertaining to Anti-Money Laundering and Combating Financing of Terrorism;
- e) Automatic alerts and flags on suspicious transactions;
- f) Detection of irregular patterns of transactions.
- g) A customer account with a payment service provider or electronic money issuer shall be deactivated for two (2) days when a SIM card is swapped or replaced. The mobile money account shall only be re-activated after presentation of a valid identification and registration by the subscriber.

(2) An electronic money issuer shall keep records of every electronic money transaction processed by it for a minimum period of six (6) years.

(3) Customer transaction details shall be kept in a live environment for a period not less than two (2) months.

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- (4) Electronic money issuers shall ensure that they have systems that provide adequate data protection and data integrity.
- (5) An electronic money issuer shall block electronic money account when there is a suspicious transaction. The account will become operational after investigation.
- (6) Prior approval shall be obtained from the Bank before the decommissioning of a mobile network site or any activity that may result in unavailability of electronic money service delivery by the network provider.
- (7) The electronic money issuer shall provide the Bank a roadmap to manage the transition of the decommissioning so that subscribers are not unduly affected.
- (8) Failure to comply with sub section (7) shall be liable to pay to the Bank an administrative penalty of 5,000 penalty units.

Customer Due Diligence Requirements

31. (1) The following types of identification are acceptable for the purposes of Customer Due Diligence under this Act: National identification, Voter identification, Driver's License, National Health Insurance Scheme identification, Passport, Biometrics and any other type of identification prescribed by the Bank.

(2) The following minimum Customer Due Diligence requirements shall be adhered to by every electronic money issuer in opening the various types of accounts for electronic money holders:

a) Minimum Know Your Customer accounts customers have to provide their name, date of birth, residential address, telephone number and any type of photo identification or Biometrics that can reliably identify the customer. Proof of address may not be necessary.

b) Medium Know Your Customer accounts, customers have to provide their name, date of birth, residential address, telephone number, acceptable identification as stated under sub section (1). Proof of address may not be necessary.

c) Enhanced Know Your Customer accounts, customers have to fully comply with the Bank's Know Your Customer requirements for opening bank accounts,

d) For merchant accounts, companies have to provide their Certificate of Incorporation, Certificate to Commence Business, Tax Identification Number, bank account information and any other requirements the Bank may prescribe.

(3) Over the Counter transactions customers should be subject to the following Know Your Customer requirements: Name, Identification Number and Telephone number of the customer.

(4) Electronic money issuers will, in all instances of opening Minimum Know Your Customer accounts, be required to capture under separate fields in their system at least the following information: customer name; residential address;

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customer date of birth; or any type of identification and its number and the customer's telephone number.

- (5) Electronic money issuers will in all instances of opening Medium or Enhanced Know Your Customer accounts be required to capture under separate fields in their system at least the following information: customer name; customer date of birth; acceptable identification type and number; residential address and the customer's telephone number.
- (6) Electronic money issuers will in all instances be required under sub section 6 to capture under separate fields in their system at least the following information: Identification type and number; image of photo identification and the customer's telephone number. These requirements may be varied by the Bank as it deems it fit.
- (7) Electronic money issuers that have already collected and retained customer ID information during registration of Subscriber Information Module cards or bank accounts, are allowed to directly use this information to satisfy relevant Customer Due Diligence requirements across the various account tiers outlined in sub section (2). Electronic money issuers must confirm these documentations or obtain different one on onboarding.
- (8) Electronic money issuers must validate the Subscriber Information Module card registration against the database of the issuing authority of the Identification document before activating the account.
- (9) Electronic money issuers are in all instances under strict obligation to conduct such verification of customer information as is necessary to appropriately manage material risks of error, fraud and breaches of applicable rules and principles with regard to Anti-Money Laundering/Combating of Financing Terrorism.
- (10) An electronic money issuer who fails to comply with sub section (9) is liable to pay to the Bank an administrative penalty of 2,000 penalty units.
- (11) The Electronic money issuer shall be required to rectify the violations and report to the Bank within ten (10) working days.

Liquid Assets Requirements

32. (1) Dedicated electronic money issuers shall keep 100% of the electronic money float in liquid assets. The liquid assets shall remain unencumbered and may take the form of:

a) Cash balances held at banks in Ghana and withdrawable on demand, provided that such balances shall be held separately from balances relating to any other operations of the dedicated electronic money issuer; or

b) Any other liquid asset that may be prescribed by the Bank.

- (1) Banks and Specialised Deposit-Taking Institutions are not subject to the liquid assets requirement under sub section (1), but are required to include electronic

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money balances in the determination of their statutory reserve requirement and other liquidity requirement that the Bank may prescribe.

- (3) Dedicated electronic money issuers shall on a daily basis, not later than 2:00pm Ghana time each day, reconcile the previous day's liquid assets held by them for the redemption of electronic money with the electronic money value held by the customers, agents and merchants on their platforms. Any deficiencies in the amount of liquid assets held shall be rectified by 12pm the next day.
- (4) Records pertaining to sub section (3) on liquid assets and reconciliations shall be made available to the Bank for inspection.
- (5) A dedicated electronic money issuer which does not comply with sub section (3) is liable to pay to the Bank an administrative penalty of 2,000 penalty units.
- (6) The requirements under this section may be varied by the Bank as it deems fit

Fund Isolation Requirements

- 33.** (1) The electronic money account of every electronic money issuer shall:
- a) Not be mixed at any time with the funds of any natural or legal person other than the electronic money holders on whose behalf the funds are held;
 - b) Be held in either individual or pooled accounts with one or more banks in Ghana.
- (2) The sum total of electronic money accounts balances held with any one bank on behalf of a given electronic money issuer shall not exceed 25% of the networth of the bank.
 - (3) A bank shall not hold electronic money account balances in aggregate more than 40 percent of its networth.
 - (4) The electronic money account balances in excess of the limits stipulated in sub sections (2) and (3) shall be invested in 91 day Treasury bill within ten (10) days of the occurrence of the excesses.
 - (5) The discount earned under sub section (4) shall be credited to the interest account.
 - (6) The bank shall retain ten (10) percent of the discount earned on the investment while the electronic money holders receive seventy-five (75) percent and the electronic money issuers receive fifteen (15) percent
 - (7) The provisions under sub sections (2), (3), (4) and (6) may be varied by the Bank as it deems fit.
 - (8) A bank which violates sub sections (2) (3) (4) (5) and (6) is liable to pay to the Bank an administrative penalty calculated as the base rate of the bank and a risk premium of five (5) percent of the excess exposure.
 - (9) The electronic money account holding bank which is on the verge of violating sub sections (2) (3) (4) (5) and (6) shall notify the Bank within five (5) days.

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- (10) An authorised or licensed electronic money issuer shall:
- a) Notify the Bank on the opening of electronic money account to facilitate the issuance of electronic money;
 - b) Open an electronic money account for holding deposits received from customers who have purchased electronic money from the electronic money issuer;
 - c) Ensure that the account has records of all customers served under electronic money service;
 - d) Ensure that the electronic money account is protected from risks that may occasion loss to beneficiaries of the funds; and
 - e) Comply with any other requirement as the Bank may prescribe.
- (11) An electronic money issuer who contravenes sub section (10) is liable to pay to the Bank an administrative penalty of 5,000 penalty units

Outsourcing

- 34.** (1) An electronic money issuer or payment service provider may contract a local third party service provider to perform activities relating to the electronic money business, including:
- a) Technology platform;
 - b) Internal Audit and Risk Management functions;
 - c) Recruitment and registration of customers;
 - d) Selection and/or training of agents;
 - e) Management of agents such as monitoring, branding or liquidity management;
 - f) Sales and marketing;
 - g) Provision and/or maintenance of equipment.
 - h) Any other activity that the Bank may determine
- (2) Any outsourcing by electronic money issuer or payment service provider shall comply in full with sub section (1) and any other notices or directives that the Bank may issue.
- (3) A service level agreement shall be put in place for all outsourcing arrangements and copies forwarded to the Bank within ten (10) days of signing the agreement.

Outsourcing of activities

- 35.** (1) A licensee or authorised entity who intends to outsource its operational functions shall, in writing, inform the Bank.
- (2) Outsourcing of important operational functions may not be undertaken in such a manner to impair materially the quality of internal control of the licensee or

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authorised entity; and the ability of the Bank to monitor the licensee's or authorised entity's compliance with the licensee's or authorised obligations under this Act.

- (3) In sub section (2), an operational function is important if a defect or failure in its performance would materially impair:
 - a) The continuing compliance of the licensee or authorised entity with the requirements of its licence or authorisation; or
 - b) The licensee's or authorised entity's financial performance, or the soundness or the continuity of its services.
- (4) The outsourcing shall comply with the following conditions:
 - a) The outsourcing will not result in the delegation by senior management of its accountability;
 - b) The relationship and obligations of the issuer towards the users of any relevant payment instrument are not to be altered;
 - c) The conditions with which the licensee or authorised entity is to comply with the licence or authorisation are not to be undermined;
 - d) No other condition of the licence or authorisation is to be amended, suspended or revoked; and
 - e) Any other conditions that the Bank may specify

Transfer and Termination of Electronic Money Services

36. (1) Authorisation or licence to provide electronic money services may not be transferred from one entity to another without the written approval of the Bank.

(2) Prior approval must be sought from the Bank for proposed change of name or ownership of an electronic money issuer.

(3) An electronic money issuer that plans to cease its electronic money business is obligated to wind down operations in a structured and orderly manner. In particular, it must:

- a) Ensure that all of its customers are able to cash out or transfer to a different account the entirety of their outstanding electronic money balances at no charge within ten (10) days.
- b) Notify all customers through direct communication and public information through the media of the termination of the service, any procedures for retrieving their funds as per sub section (3) (a) the locations in which they can do so and the time span during which they can retrieve their funds.
- c) Ensure that the bank holding the electronic money pooled account and the electronic money issuer have updated identifying information of the associated customers and their respective balances.

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Oversight and Reporting Requirements of Electronic Money Issuers and Payment Service Providers

Oversight

37. (1) The Bank shall exercise oversight, supervisory powers and functions over electronic money issuers and Payment Service Providers.

(2) The Bank shall carry out examinations of the operations and affairs of each electronic money issuer and each payment service provider.

(3) The examination shall be carried out at such times and with such frequency as the Bank may consider appropriate taking into account its evaluation of micro-prudential and macro-prudential concerns and the risks posed by the institution.

(4) Without prejudice to its powers to examine electronic money issuers and payment service providers under subsection (3), the Bank without prior notice may carry out scrutiny or investigations into a specific matter or activity relating to the operations of an electronic money issuer or a payment service provider.

(5) Every electronic money issuer or Payment Service Provider shall get its books of accounts and information technology systems audited and shall submit a copy of the audited report to the Bank within three months of the close of the financial year.

(6) The Bank shall be allowed access to review the systems and operations of the electronic money issuer or payment service provider. Whenever the circumstances warrant, such access shall extend to the agents, partners, service providers, or third party of the electronic money issuers or payment service provider.

(7) An electronic money issuer shall grant the Bank a read only user access to its real time accounting system.

(8) An electronic money issuer shall grant access to the Bank or its authorised agent to connect to their systems for monitoring purposes.

Reporting and Notification

38. (1) Every electronic money issuer or payment service provider shall, by the fifteenth day of the following month, submit to the Bank in the prescribed form, information regarding:

- a) The names of electronic money holders and their corresponding account balances and tier levels;
- b) The number of registered and active electronic money accounts issued by the electronic money issuers stating the type of account;
- c) The volumes and values of all activity on its electronic money platform broken down by type of transaction;

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- d) The number and types of registered and active agent points in its network, including sub-agents not directly under contract;
 - e) The sum total of outstanding electronic money balances held by the electronic money account holders;
 - f) The aggregate value of all float accounts used in the electronic money business;
 - g) The value of each float account used in the electronic money business held with respective banks;
 - h) The number and value of all dormant accounts;
 - i) Incidents of fraud, theft or robbery respectively, including at agents points and the amount involved should be reported as it occurs;
 - j) Number of complaints received and resolved;
 - k) Number and type of material service interruptions and significant security breaches;
 - l) Suspicious transaction reports and also reported as it occurs to the Financial Intelligence Centre;
 - m) Number of system outages that result in the inability of the customer to access an electronic money account lasting more than 1 hour; and
 - n) Any other information as may be required by the Bank.
- (2) Reports of all surveillance activities carried out by certified bodies should be submitted directly to the Bank by the certified body.
- (3) The electronic money issuer or payment service provider shall report in writing to the Bank not later than 10 calendar days after the occurrence of any of the following:
- a) Material changes in the information submitted to the Bank at the time of application;
 - b) Any indication of suspected or confirmed fraud relating to the electronic money service or payment service, any security breaches, any material service interruption or other significant issues that may affect the safety and efficiency of the electronic money service or payment service;
 - c) Any indication of loss of confidential data;
- (4) Any material change or enhancement in the electronic money issuance or provision of payment service which an electronic money issuer or payment service provider intends to introduce shall be subject to approval of the Bank and the Bank notified in writing thirty (30) calendar days prior to the proposed implementation of the change or enhancement.
- (5) The following shall be subject to prior approval of the Bank:

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- a) Any intended transfer of shares that involves more than fifteen percent (15%) of all shares or results in any shareholder acquiring or disposing of a significant shareholding of the electronic money issuer or payment service provider;
 - b) Any material changes in the payment service that alters the scope of the service, such as new service capabilities or a change in technology service providers;
- (6) An electronic money issuer or a payment service provider is liable to pay to the Bank an administrative penalty of 250 penalty units for a contravention of any of the following:
- a) Non-submission of returns or required information;
 - b) Incomplete submission of returns or required information;
 - c) Delay in submission of returns or required information;
 - d) Failure to notify the Bank of any material change;
 - e) Inaccurate submission of the required information, data, statement or any other information required by the Bank.

Consumer Protection

Principles of Consumer Protection

39. Electronic money issuers, payment service providers or any agent acting on behalf of a principal shall adhere to the universal principles on consumer protection including:

- a) Equitable, honest and fair treatment of all customers, especially vulnerable groups such as the illiterate, less privileged women, physically challenged and the underprivileged.
- b) Transparency and the disclosure of clear, sufficient and timely information on the fundamental benefits, risks and terms of any product or service offered in an objective and accessible form;
- c) Sufficient and accessible information to customers on their rights and responsibilities;
- d) Protection of customers' privacy, tangible and intangible assets related to the service, notably including personal details, financial information and transaction data;
- e) Responsible business conduct of all staff and authorised agents;
- f) Adequate systems and processes for complaints handling and redress; and
- g) Any other directive that the Bank may issue on consumer protection

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Responsibilities of Electronic Money Issuers and Payment Service Providers

- 40.** (1) An electronic money issuer or payment service provider shall ensure high quality performance at least 99.5% service availability and accessibility.
- (2) It shall within twenty-four (24) hours inform the electronic money or payment service users about any disruption or anticipated disruption in the system through short messaging system or other means prescribed by the Bank.
 - (3) Electronic money issuers or payment service providers shall enter into a written agreement, both electronic and print versions, with every electronic money account holder or users of payment service.
 - (4) Electronic money issuers or Payment service providers shall submit daily individual electronic money holders user account balances to the Bank.
 - (5) The individual electronic money account which balances fall within the prescribed threshold of the Ghana Deposit Protection Act, 2016 (Act 931) shall be eligible for deposit protection.
 - (6) The electronic money issuer or payment service provider will provide explanation on product material and general product elements to prospective clients and ensure that prospective clients have understood the nature and form of the product terms and conditions, features and specifications even if they are not literate. The agreement shall at a minimum:
 - a) Clearly identify the electronic money account holder or user of the payment service;
 - b) Provide clear guidance on the electronic money holders' or user of payment service right of redemption, including if any, conditions and fees for redemption;
 - c) State that the ownership of the electronic money holders' or payment service users' fund is not in any way impaired by the use of pooled float accounts established in the name of the issuer of the electronic money or payment service provider and
 - d) Include information on available redress procedures for complaints together with the address and contact information of the electronic money issuer or payment service provider.
 - (7) Marketing by electronic money issuers or payment service providers shall follow the general principles of honesty and transparency. The addresses, telephone numbers and electronic mail address of the provider must be included in all marketing material.
 - (8) Each electronic money issuer or payment service provider shall provide a list with details about name of location of all its customer service points and its

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agents, and a description of its products and services including the applicable charges on its website and in short messaging service to all its customers.

- (9) All fees and service charges for electronic money transactions or provision of payment service shall be prominently displayed at its head office, branches as well as the premises of its agents using a standard summary sheet prescribed by the Bank.
- (10) Changes in tariffs shall be announced to subscribers through short messaging service or any other means prescribed by the Bank seven (7) days prior to the changes.
- (11) Customers shall be given an electronic notification of charges/fees with an option to cancel transaction before the authorisation of a transaction.
- (12) Transaction charges shall be paid only at the advertised point of transaction.
- (13) Each agent shall be allocated a unique identification number that is prominently displayed at its agent location.
- (14) Information on agents whose contract has been terminated shall be made known to customers by short messaging service, newspaper publication or any relevant means.
- (15) Electronic money issuers and payment service providers shall maintain dedicated functional consumer complaints units for users of payment services which shall be equipped to receive complaints through phone calls, electronic mails, short messaging service and personal visit by the electronic money user or payment service customer.
- (16) Each electronic money issuer or payment service provider shall display the address, telephone numbers, and electronic mail address of the complaints resolution desk prominently at its offices and agent locations or at customer care centres prominently at its offices and agent locations.

Complaint Procedures

41. (1) Electronic money issuers or payment service provider shall set up effective procedures that allow electronic money users or payment service customers to submit complaints. At a minimum, these procedures shall:

- a) Provide easily understood information about the customer care system and procedures that should be easily accessible during normal business hours and out of business hours including statutory holidays;
- b) Allow for complaints to be lodged orally or in writing, through a customer care telephone number, visit to office, electronic mail and by post, but in each case the complaint must be lodged within a period of thirty (30) calendar days from the date of detection of the anomaly;

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- c) Provide for complaints to be resolved within five (5) working days of lodging. An additional ten (10) working days is permitted for complex issues provided the customer is informed; and
 - d) Be provided without cost to the customer.
- (2) Electronic money issuers or payment service providers shall acknowledge all complaints filed with them within three (3) working days.
 - (3) A complainant shall be advised of the expected actions and timing for investigating and resolving the complaint at the time of the complaint.
 - (4) Electronic money issuers or payment service providers shall put in place processes to provide complainants with sufficient information and the means to inquire on the progress of complaints.
 - (5) Lodged complaint shall be assigned unique reference number or other identifier to facilitate timely and accurate responses to subsequent inquiries by complainant.
 - (6) The complainant shall be advised of the outcome of the investigation of the complaint, and any resulting decision by the electronic money issuer or payment service provider.
 - (7) Where the complainant is not satisfied with the decision of the electronic money issuer or payment service provider, the complainant may report to the Bank.
 - (8) The Bank may by notice prescribe complaints procedures for effective implementation of this section.

Establishment, Designation and Systemic Risks of Payment Systems

Establishment and designation of payment systems by the Bank of Ghana

42. (1) The Bank of Ghana may

- (a) establish, operate, promote and supervise payment, funds transfer, clearing and settlement systems, subject to such rules as it may publish; and
- (b) designate any other payment, funds transfer, clearing and settlement systems, operating in the country which the Bank considers to be in the public interest for the Bank to supervise under this Act.

(2) A designation under subsection (1) (b) shall be in writing and addressed to any person the Bank reasonably believes is the operator of the system.

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Access to participation in the system of institutions approved by the Bank

43. (1) The Bank may give access to any system established under section 42 subsection (1) (a) to banks and specialised deposit-taking institution or other institution whose participation the Bank considers to be in the interest of efficient operation of the system.

(2) Where the Bank considers that participation by an institution referred to in sub section (1) in a system is no longer in the interest of efficient operation of the system, the Bank may, by Notice in writing to the institution published in the *Gazette* withdraw accessibility of the system from the institution from the date specified in the Notice.

(3) Subject to sub section 1, the Bank shall not withdraw access without giving the institution a reasonable opportunity to make representations to the Bank.

(4) For the purpose of this section, "access" means the participation by a bank, or specialised deposit-taking institution or other institution as a participating member of the system.

Supervision of established and designated systems

44. (1) The Bank may in supervising a system established or designated under section 43 subsection (1) (b),

- (a) demand information as to the operation of the system from its operators;
- (b) inspect the premises, equipment, computer hardware, software, any communication system, books of accounts, and any other document or electronic information which the Bank may require in relation to the system;
- (c) direct changes to be made to the terms of any rules, agreements or practices under which the system is operated in the interest of the public;
- (d) direct changes to be made to the rules concerning access to the system in order to ensure that the system is operated efficiently and in the interest of the public; and
- (e) exercise such other powers as may be prescribed by Regulations.

(2) The operators of the system shall comply with the Bank's directives provided under subsection (1).

(3) Information and documents obtained by the Bank, under subsections (1) and (2), shall be treated as confidential subject to such disclosure as the Bank may consider necessary in the public interest,

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(4) An operator who contravenes any of the provisions in subsection (1) commits an offence and is liable on summary conviction to a fine not less than 1000 penalty units and not more than 5000 penalty units or imprisonment not less than 4 years and not more than 10 years or both.

Systemic risk

45. (1) Where the Bank considers that there is systemic risk it may issue a directive in writing requiring the person to

- a) perform such acts as are necessary to remedy the situation and to cease or refrain from engaging in the act, omission or conduct; or
- b) provide the Bank with such information and documents relating to the matters specified in the directive.

(2) A person who without good reason refuses or fails to comply with a directive issued under subsection (1) commits an offence and is liable on summary conviction to a fine not less than 1000 penalty units and not more than 5000 penalty units or imprisonment not less than 4 years and not more than 10 years or both and the Bank may take steps under the Act to safeguard the system.

Retention of records

46. (1) Notwithstanding anything to the contrary in any legislation on record keeping, records created during the course of the operation and administration of a system established and operated or designated by the Bank under section 42 shall be retained for a minimum period of 6 years from the date of creation of the record.

(2) Records may be retained in electronic form or any other form prescribed by the Bank

Customer Information and Parties' Obligation In Respect Of a Transaction

Need for transparency

47. A system shall operate in accordance with the principles of transparency, so that users are aware of the conditions upon which transfers are effected.

Customer information before the execution of a transfer

48. Upon request, an institution shall make available to its actual and prospective customer in a comprehensible form, information on conditions for transfer through the system, including at least:

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- (a) an indication of the time needed for the funds to be credited to the account of the beneficiary's institution;
- (b) an indication of the time needed for the funds credited to the account of the institution to be credited to the beneficiary's account;
- (c) details of any charges payable by the customer; and
- (d) details of any complaints and redress procedures available to the customer and means of access to them.

Customer information after the execution of a transfer

49. (1) Unless expressly agreed to the contrary, after the execution or receipt of a transfer, the beneficiary institution shall supply its customer with clear information in a comprehensible form, including at least

- (a) a unique reference enabling the customer to identify the transaction;
- (b) the original amount of the transfer; and
- (c) the amount of charges payable by the customer.

(2) Where the originator has specified that the charges for a transfer are to be wholly or partly borne by the beneficiary, the beneficiary shall be informed accordingly by the beneficiary's institution.

Rights of parties to negotiate obligations under a transaction

50. Despite the minimum obligations stated as applicable to a transfer through a system under this Act, parties may assume greater obligations either through agreement or through the operation of the rules of the system.

Transfer time obligation

51. (1) The originator's institution shall execute a transfer within the time limit agreed with the originator or in the absence of an express agreement, within the standard time limit applicable to the system.

(2) Where the agreed time limit is not complied with, the originator's institution shall compensate the originator by payment of interest.

(3) The interest in subsection (2) shall be calculated by applying the 91-day Treasury Bill discount rate to the amount of the transfer for the period from the end of the agreed time limit to the date on which the funds are credited to the account of the beneficiary's institution.

(4) Where non-execution of a transfer by the originator's institution within the agreed time limit is attributable to an intermediary institution, the intermediary

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institution shall be required to reimburse the originator's institution in respect of any compensation paid to the originator by the originator's institution.

Obligation to make funds available upon transfer

52. (1) The beneficiary institution shall make the funds resulting from a transfer available to the beneficiary within the time limit agreed with the beneficiary or in the absence of an express agreement, within the standard time limits applicable to the system.

(2) Where the agreed time limit is not complied with, the beneficiary institution shall compensate the beneficiary by payment of interest.

(3) The interest in subsection (2) shall be calculated by applying the 91-day Treasury Bill discount rate to the amount of the transfer for the period from the end of the agreed time to the date on which the funds are credited to the beneficiary's account.

Delay attributable to originator or beneficiary

53. Compensation shall not be paid to an originator or a beneficiary under sections 51 and 52 where the originator's institution or the beneficiary's institution can establish that the delay is attributed to the originator or the beneficiary.

Other rights

54. Sections 51 and 52 shall not prejudice any other rights available to persons participating in the execution of the transfer.

Obligation to transfer full amount

55. (1) The originator's institution, any intermediary institution and the beneficiary's institution are each obliged to execute any transfer for the full amount, unless the originator specifies that the costs of the transfer are to be borne wholly or partly by the beneficiary.

(2) Subsection (1) does not limit any rights of the beneficiary's institution to charge the beneficiary for the administration of the beneficiary's account.

Obligation to refund in the event of non-execution

56. (1) Where a transfer has been accepted by the originator's institution and the relevant amount is not credited to the account of the beneficiary's institution, the originator's institution shall, without prejudice to any other claim which may be

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made, make a refund to the originator of the amount of the transfer plus interest and any charges paid by the originator for the transfer.

(2) The interest shall be calculated by applying the 91-day Treasury Bill discount rate to the amount of the transfer for the period beginning from the date of receipt by the originator's institution to the date of the refund.

(3) Where the transfer has been made using an intermediary institution, the institution which has accepted the transfer shall reimburse the originator's institution against its liability under subsection (1), and where that intermediary institution itself used another intermediary institution, the latter shall be reimbursed by that institution accordingly.

(4) Where the transfer was not completed because of

(a) an error or omission in the instructions given by the originator to the originator's institution; or

(b) non-execution of the transfer by an intermediary institution expressly chosen by the originator

the originator's institution and any other institution involved is obliged to use its best endeavours to obtain a refund of the amount of the transfer which may be subject to charges for the expenses incurred in connection with the transfer.

Finality and Insolvency

Finality

57. A system shall specify the principles applicable to achieve finality in its operations.

Irrevocability

58. (1) A transfer is executed at the time specified in the rules of the system.

(2) Without prejudice to any remedies that may exist to recover an equivalent amount of transfer in the case of fraud, mistake or similar vitiating factors, a transfer is irrevocable once executed.

Settlement

59. (1) The discharge of settlement obligations between institutions participating in the system is effected by means of entries to accounts maintained with the Bank for settlement purpose.

(2) A payment service provider which holds electronic money float with more than one bank shall ensure all settlement transactions between the respective banks

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accounts is done through the Ghana Interbank Payment and Settlement System or any other means that the Bank may prescribe.

- (3) A settlement effected in accordance with subsection (1) is final and irrevocable.

Transfer of Electronic Money

60. Customer funds and all agent-based electronic money transactions undertaken by a dedicated electronic money issuer shall be effected electronically and settled in real time against a pre-funded account held by an agent.

Netting agreements and netting rules

61. (1) This section applies despite anything to the contrary in the law relating to insolvency.

(2) Where an institution that participates in a system established or designated under section 42 is wound up and placed in administration or otherwise declared insolvent by a court, any provision contained in a written netting agreement to which that institution is a party or any netting rules and practices applicable to the system are binding on the liquidator or administrator of the institution in respect of any payment or settlement obligation which

- (a) has been determined through netting prior to the issue of the winding-up or administration order; and
- (b) is to be discharged on or after the date of the winding-up or administration order or the discharge of which was overdue on the date of the winding-up or administration order.

Collateral for payment and settlement of obligations

62. Despite anything contrary to insolvency law, any asset of an institution that participates in a system, which, prior to the issue of an order for the winding-up or administration of that institution was provided to

- (a) the Bank; or
- (b) the operators of the system designated under section 42 subsection (1)(b),

as security in respect of the institution's payment or settlement obligations, shall be utilized by the Bank or by the operators of the designated system to the extent required for the discharge of those payment or settlement obligations.

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Dispute Settlement

Settlement of disputes

63. (1) Where an institution that participates in a system considers itself wronged by a decision taken by the Bank under this Act and the matter cannot be resolved between the institution and the Bank, the matter may be referred for settlement through mediation by the parties.

(2) For the purpose of subsection (1),

- (a) the institution and the Bank shall agree on a mediator;
- (b) the mediator shall acquaint with the position held by the institution and the Bank;
- (c) the mediator, the institution and the Bank shall discuss the dispute at a meeting attended by all of them ; and
- (d) the institution and the Bank shall agree to share the mediator's costs equally.

(3) This section does not apply to a dispute that falls within section 45

Admissibility of evidence

64. Without prejudice to the admissibility of any evidence in a court of law, information, that relates to a transfer through a system contained in,

- (a) any document;
- (b) computer print-out or any electronic storage media or form, is admissible as evidence of or relating to the transfer.

Clearing House

Establishment of Clearing House

65. (1) The Bank shall establish a Clearing House.

(2) The Bank may designate an institution it deems fit to implement and manage specified payment systems services and the clearing house.

(3) The institution designated in subsection (2) shall submit regular reports and be under the supervision of the head of the department responsible for payment systems.

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Functions of the Clearing House

66. The functions of the Clearing House are to:

- a) facilitate the speedy presentment of cheques, automated debits and credits and other payment instruments among the member banks;
- b) provide a mechanism for the timely determination of the net settlement positions of the members arising from the clearing process and to communicate same to the Bank;
- c) retain records of all clearing items in electronic form; and
- d) perform all other lawful acts incidental to or conducive to the attainment of all the foregoing objectives and as approved or assigned by the Bank.

Qualification for Participation in the Clearing House

67. The participants in the Clearing House shall consist of the Bank and banks which:

- a) have a valid banking licence;
- b) have been admitted by the Bank as a settlement bank;

Location of the Clearing House

68. The location of the Clearing House may be determined by the Bank.

Clearing Agency

69. (1) A member bank may act as an agent of other banks and specialised deposit-taking institutions in the Clearing House. The agency arrangements shall be covered by a Service Level Agreement, a copy of which shall be submitted to the Bank and the clearing house.

(2) A bank, acting as agent shall ensure that the banks and institutions it represents, which do not have a settlement account at the Bank, shall be assigned with unique clearing sort codes.

Agency Fee

70. Agency fee for clearing house services shall be negotiated between the parties concerned.

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Clearing Charges

71. Participating banks shall pay clearing charges as shall be determined by the clearing house subject to approval by the Bank.

Withdrawal of Clearing Participant

72. (1) A participating bank may withdraw from the clearing house on giving at least twenty-one (21) days' notice in writing to the Bank and clearing house.

(2) The notice of withdrawal shall indicate the agent bank through which claims on the withdrawing participating bank shall be made. The Bank shall notify other participating banks of the intended withdrawal within seven (7) days of the receipt of the notice.

(3) A withdrawing participating bank shall make adequate arrangements acceptable to the clearing house to surrender any assets and settle any obligations to the clearing house.

Suspension of Participation

73. (1) The Bank may suspend a participating bank on recommendation of the clearing house giving at least twenty-one (21) days' notice in writing where it is satisfied that the suspension is in the interest of the clearing system.

(2) A participating bank on suspension shall submit its instruments for clearing through the Clearing Housing Gateway of another participating bank.

(3) The Bank shall notify other participating banks of the suspension, fourteen (14) days prior to the effective date of the suspension. The suspension shall continue in force until the defect leading to the suspension has been remedied.

(4) The suspended bank shall indicate the agent bank through which claims on the suspended bank shall be made.

Cessation of participation

74. (1) A participating bank shall cease to be a participant upon the revocation of the participating bank's licence by the Bank.

(2) Cessation shall not absolve a participating bank from any outstanding obligations arising from participation in the clearing house.

Re-admission to participate in the clearing house

75. (1) A bank shall be re-admitted when the Bank lifts the suspension or revocation or reviews its earlier decision under sections 73 (1) and 74 (1).

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(2) A bank upon re-admission shall pay a re-admission fee to be determined the Bank.

Presentment of Electronic Instrument

76. A bank may present a payment instrument in an electronic form in a clearing house.

Nature of Presentment of Electronic Instrument

77. (1) The Bank shall prescribe and approve the nature of electronic instrument presentment for payment through a clearing house.

(2) Subject to sub section (1), a bank may present a payment instrument for payment to another bank, on which it is drawn, by electronically transmitting its essential features instead of presenting the instrument itself.

Admissibility of electronic image of a payment instrument as evidence

78. In the event of proceedings in a court of law, tribunal or any other judicial proceedings, a payment instrument or a certified copy of it or the essential details of the payment instrument retrieved from an electronic medium, which is the subject of proceedings in a court of law, tribunal or any other judicial proceedings, shall be admissible as evidence.

Unlawful custody of funds

79. (1) A bank is liable to pay to the Bank an administrative penalty specified in subsection (2) where the participating bank commits any of the following violations:

- a) failure to credit customers within the stipulated time specified by the Bank
- b) failure to return unapplied credits / debits within the period as prescribed by the Bank

(2) The penalty in subsection (1) shall be calculated by applying the offending bank's base rate plus five hundred (500) basis point on the customer's fund.

Cheque Codeline Clearing Procedures

Cheque Codeline Clearing and Bank Responsibility

80. A collecting bank shall be responsible for truncating cheques deposited for value at its branches. The collecting bank shall exercise due diligence over all instruments

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collected for presentment to the Clearing House through proper control and authorization procedures.

Verification of Payment Instruments

81. (1) There shall be greater responsibility on the collecting or presenting bank as clearing shall be based on images and Magnetic Ink Character Recognition codeline data. A bank shall enforce Know Your Customer norms and requirements.

(2) A bank shall observe all precautions which a prudent banker ought to under the circumstances, such as, the apparent tenor of the instrument, its physical feel and any tampering visible to the naked eye with reasonable care, amongst others.

(3) A bank shall employ suitable risk management techniques such as scrutiny of high value transactions; limit based checking by officials and new account alerts and confirmations.

(4) A collecting bank shall take full responsibility for collecting on behalf of the payee and must exercise due diligence.

Accreditation of Printers / Vendors of Payment Equipment

82. (1) An encoder vender of cheques, printer of payment instrument and vendor of payment equipment shall apply for annual accreditation from the Bank.

(2) A payment instrument, printing firm and vendor of payment equipment shall meet the standards prescribed by the Bank.

(3) Cheque printing firms shall pay an annual accreditation fee as may be prescribed by the Bank from time to time.

(4) A bank and payment service provider shall ensure regular update of software and firmware of payment systems infrastructure in line with the acceptable standards.

(5) A bank or payment service provider which fails to comply with sub section (4) is liable to pay to the Bank an administrative penalty of 1000 penalty units.

Permission to Use Agents

Authorisation of Agency Business

83. (1) A principal may utilize an agent to serve its customers provided that the principal assumes full responsibility and liability for the actions of the agent to the extent that the action relate to the agency business irrespective of whether the actions are proscribed by the agency agreement.

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- (2) A principal seeking to utilize agents shall apply for and obtain the written authorisation of the Bank before commencing agency business.
- (3) For all agency business, approval shall be sought from the department of the Bank responsible for payment systems.
- (4) The following information shall be submitted in compliance with sub section (3):
- a) The services to be provided through agents;
 - b) The proposed geographical coverage of agents over a (3) three-year period;
 - c) The intended use of any master-agents;
 - d) The principal's agent due diligence policy and procedures and agent's due diligence report;
 - e) Copies of all draft agency agreements drawn up to conform with the standard specified in sub section (5);
 - f) The policies and procedures applicable to the provision of services through agents, and a description of the technology to be used;
 - g) A risk assessment report of the operations to be performed through the agents including the mitigating measures to be adopted to control the identified risks;
 - h) An internal audit report regarding internal controls to be used for agency business and for any master agents;
 - i) Anti-money laundering/countering financing of terrorism policies and procedures as they relate to agency business, including but not limited to know-your-customer procedures;
 - j) Agent operational policies and procedures, notably those relating to monitoring and enforcing compliance of agents and master-agents with all requirements under this Act;
 - k) A policy document on how the principal will address the risk of agent overselling or overcharging;
 - l) The full incentive structure for agents and master-agents associated with every service provided, including the agent fee and revenue sharing structure.
- (5) A standard agency agreement shall, at a minimum:
- a) Define the rights and responsibilities of both parties;

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- b) Specify that the principal is wholly responsible and liable for all actions or omissions of agents providing the services on behalf of the principal, even if the action has not been authorised in the contract, as long as the action relates to agency business;
- c) Set the scope of work to be performed by the agent and specify the actions that are not permissible;
- d) Specify that electronic money agents shall operate against pre-funded accounts only;
- e) Set the agent and master-agent remuneration and any revenue sharing structure, including incentives and bonuses;
- f) State that any outsourced service is subject to regulatory approval by the Bank;
- g) State that an agent shall not perform management functions, make management decisions, or act or purport to act on behalf of management or as an employee of the principal;
- h) State that an agent or master-agent or employees of an agent or master-agent have no claim to be treated as an employee of the principal;
- i) Specify that the agent shall ensure safe-keeping of all relevant records not already captured on the platform and ensure that the records are, at regular pre-specified intervals, moved to the principal who shall ensure safe-keeping of these records for at least 6 years;
- j) State that records and data relating to a principal's customers and the transactions that are collected or generated by the agent or master-agent whether from the customers, the principal or from other sources, are the property of the principal and shall be kept confidential;
- k) State that the agent or master-agent is bound to complete confidentiality forms regarding the customers and transactions of the customers;
- l) Allow unrestricted access to the Bank to all internal systems, information, data and documents of the agent or master-agent relating to the agency business;
- m) State that an agent or master-agent shall not subcontract any or part of its contractual obligations to a third party;
- n) Establish a protocol for changing the terms of the service contract, stipulations for default and termination of the contract as well as for dispute resolution.

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- (6) The principal shall define a contingency plan to mitigate any significant disruption, discontinuity or gap in the agent's or master-agent's function.
- (7) Agents or master-agents shall be prohibited from charging any additional fee to the electronic money user or payment service customer for services rendered by the agent on behalf of the principal beyond such fees prescribed and advertised by the principal.
- (8) A principal or master-agent shall conduct adequate compulsory onboarding training and on-going training of agents and ensure that agents are well trained to offer knowledgeable support to customers.
- (9) The principal or master agent shall conduct regular monitoring of agents to ensure that the agent offers safe and reliable services and comply with this Act.
- (10) When an agent network manager directly provide banking service or electronic money service to end users, the agent network manager shall be regarded as an agent under this Act.

Agent Eligibility and Agent Due Diligence

84. (1) The principal shall consider the following information in assessing the suitability of a prospective agent or master agent:

- a) Any criminal record in matters relating to finance, fraud, honesty or integrity;
- b) Any negative information in credit reference bureaus;
- c) Reputation in the community;
- d) Business experience and track record;
- e) Any other matter which negatively or positively impacts on the person.

(2) A principal before entering into an agency contract shall ensure that all prospective master-agents adhere to the following eligibility requirements:

- a) The prospective master-agent must not have been classified as a non-performing borrower by a bank or specialised deposit-taking institutions in the twelve (12) months preceding the date of application. This status shall be maintained for the duration of the contract;
- b) The prospective master-agent must exhibit financial soundness and cash handling capabilities arrangements for security and internal control commensurate with the operational risks;

(3) A principal shall have clear and well documented policies and procedures for Agent Due Diligence and ensure that the agency business, including any parts

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undertaken by master-agents and agent network managers, are at all times in compliance with the policies and procedures for Agent Due Diligence

(4) The procedures under sub section (3), at minimum, shall contain new agent take on procedures, initial due diligence and regular due diligence checks to be performed at specified intervals and a list of early warning signals and corrective actions.

(5) An Agent Due Diligence shall clearly specify roles and responsibilities of various functions and individuals within the principal business with respect to agent management and supervision.

Permissible Activities of Agents

85. (1) An electronic money issuer or payment service provider may utilize agents to perform any or all of the following functions in connection with electronic money or provision of payment service business:

- a) Opening Minimum or Medium Know Your Customer electronic money accounts on behalf of the principal;
- b) An Agent incorporated as a legal person and has the necessary systems and controls in place may open Enhanced Know Your Customer electronic money accounts on behalf of the principal;
- c) Balance inquiry and the provision of account statements;
- d) Cash-in and cash-out through the customer's own account;
- e) Cash-out of transfers not received to an account, including funds transfers, inward international remittances, salaries, pensions, benefits and loan disbursements subject to transaction limits of GH¢ 500 or as the Bank may determine;
- f) Receipts for goods and services, bills collection, loan repayment, insurance premiums and other receipts that may be determined by the Bank;
- g) Funds transfers, domestic remittances and inward international remittances;
- h) Marketing of credit, savings and insurance products offered and underwritten by duly licensed banks and specialised deposit-taking institutions or insurers; and
- i) Any other activity authorised by the Bank.

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(2) A bank or specialised deposit-taking institution may utilize agents to perform any or all of the following functions in connection with banking business:

- a) Marketing of credit, savings, investment and insurance products;
- b) Receipt, verification and forwarding of applications for credit, savings, investment and insurance products to the banks and specialised deposit-taking institutions;
- c) Receipt and forwarding of applications for payment cards, account opening and cheque books to the banks and specialised deposit-taking institutions;
- d) Delivering of bank mail to bank customers; and
- e) Any other activity authorised by the Bank.

Non-Permissible Activities of Agents

86. (1) An Agent shall not perform the following functions:

- a) Open any form of bank account;
- b) Undertake any form of appraisal of credit and insurance application;
- c) Approve application for credit, insurance or investment product;
- d) Cash bank cheque;
- e) Undertake any form of foreign exchange transaction;
- f) Make advance payment from funds to be released by the principal;
- g) Give any type of guarantee in a transaction that the agent facilitates;
- h) Any other activity proscribed by the principal in the agency contract; and
- i) Any other activity proscribed by the Bank.

(2) An agent shall not take any of the following actions:

- a) Provide or purport to be providing any agency-related services other than those expressly permitted in the agency contract;
- b) Directly charge a customer any fee beyond the standard fee prescribed by the principal;
- c) Conduct electronic money transaction when there is communication failure or when the issuance of physical or electronic receipt is not possible;

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- d) Sub-contract all or part of its contractual obligations to a third party; and
- e) Any other activity proscribed by the Bank.

(3) An agent may provide services to multiple principals provided the agent has separate agency agreement with each principal.

(4) An agent or a master-agent of a bank and specialised deposit-taking institution shall not brand as a bank or specialised deposit-taking institution.

(5) An agent or a master-agent who contravenes subsection (4) is liable to pay to the Bank an administrative penalty of 250 penalty units.

Appointment of Agents

87. (1) A principal shall provide the Bank with the following information about an agent within twenty (20) days of appointment:

- a) Information about the agent and the business organisation of the agent, including name of legal and natural persons and also identification or business registration numbers;
- b) The physical location, Global Positioning System co-ordinates, postal address, and telephone numbers;
- c) A description of the commercial activities the agent has been carrying on for the last twelve (12) months immediately preceding the date of the application;
- d) A copy of agent agreement stating any variations in the terms and conditions from the standard agency agreement and assigning reasons for these variations;
- e) The financial services to be provided by the agent and the transaction limits;

(2) The principal shall notify the Bank about any change in the information mentioned in subsection (1) within ten (10) days of the change.

(3) A principal who contravenes sub section (2) is liable to pay to the Bank an administrative penalty of 500 penalty units.

Appointment of a master-agent

88. (1) A principal shall provide the Bank with the following information about a master-agent within twenty (20) days of appointment:

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- a) Information about the master-agent and the business organisation of the master-agent, including names of legal and natural persons, identification and business registration numbers;
- b) The physical location, Global Positioning System co-ordinates, postal address, and telephone numbers of the head office and any other offices or agent points;
- c) A description of the commercial activities the master-agent has been carrying on for the last twelve (12) months immediately preceding the date of the application;
- d) A copy of the agency agreement stating any variation in the terms and conditions from the standard agency agreement and assigning reasons for any variations;
- e) The master-agent's agent due diligence policy and new agent take on procedures;
- f) A copy of the standard agency agreement under which the master-agent contracts an agent on behalf of the principal;
- g) An internal audit report by the principal regarding the internal controls of the master-agent in relation to the agency business;
- h) Anti-money laundering and countering the financing of terrorism policies and procedures of the master-agent as the policies and procedures relate to agency business, including know-your-customer procedures;
- i) Agent operational policies and procedures, including those in respect of monitoring and enforcement of compliance by agents with all requirements under this Act;
- j) The services to be provided by the master-agent and the transaction limits; and
- k) The incentive structure for the agent managed by the master-agent associated with the service, the agent fee and revenue sharing structure.

(2) The principal shall notify the Bank about any change in the information mentioned in sub section 1, within ten (10) days of the change.

(3) A principal who contravenes subsection (2) is liable to pay to the Bank an administrative penalty of 500 penalty units.

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Agent Exclusivity

89. (1) A principal shall not sign on exclusive agreements with an agent or master-agent.

(2) An agent may contract with multiple principals.

Customer Due Diligence

90. (1) A principal shall ensure that the Customer Due Diligence requirements under this Act are followed.

(2) The liability for any non-compliance with Customer Due Diligence requirements on the part of an agent shall rest with the principal.

(3) Frequent or material instances of non-compliance with Customer Due Diligence requirements shall be grounds for sanctions including fines, administrative penalties or revocation of the authorisation or licence to conduct agency business.

Termination of Agency Contract

91. (1) A principal shall terminate an agency contract where an agent or master-agent:

- a) Is convicted of a criminal offence involving fraud, dishonesty or other financial impropriety;
- b) As a legal person, is being dissolved, wound up or declared insolvent by a court;
- c) As a sole proprietor, dies or becomes mentally incapacitated;
- d) Transfers, relocates or ceases to operate at the place of business without the prior written consent of the principal; or
- e) Contravenes any provision of this Act

(2) Where an agency contract is terminated, the principal shall publish a notice of the termination in the locality where the agent or master-agent was operating.

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Oversight, Reporting and Sanctions of Agents

Oversight

92. (1) The Bank shall exercise oversight and supervisory powers over principal, agents and master-agent.

(2) The Bank shall be allowed access to review the systems and databases of the principal and such access shall extend to the agents, master-agents, partners, service providers or other entities involved in the provision of agency services

(3) The Bank shall have powers to:

- a) Request any information from an agent or master-agent;
- b) Carry out inspection of the books and premises of an agent or master-agent;
- c) Direct an agent or master-agent to take such action or desist from such conduct;
- d) Direct a principal to terminate the agency agreement; and
- e) Direct a principal to take remedial action arising from the conduct of an agent or master-agent.

Reporting

93. (1) A principal shall, by the fifteenth day of the following month, submit to the Bank in the prescribed form, information regarding the following:

- a) The number of registered and active accounts opened for the agency business;
- b) The total number of registered and active agents, including agents managed by master-agents;
- c) The total number of registered and active agents points associated with each of the master-agents;
- d) The volumes and values of all electronic money transactions undertaken on the platform, broken down by type of transaction;
- e) The volumes and values of all transactions undertaken at agent point broken down into type of transactions;
- f) Incidents of fraud, theft or robbery at agent point;
- g) Number of complaints received;
- h) Number of complaints resolved;

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- i) Number and type of material service interruptions and security breaches; and
- j) Any other information as may be required by the Bank.

(2) A principal who contravene a provision of subsection (1) is liable to pay to the Bank an administrative penalty of 500 penalty units.

Notification of changes

94. (1) Material change in the agent services which a principal intends to introduce shall be subject to the approval of the Bank.

(2) A principal shall notify the Bank of a change in subsection (1) in writing thirty (30) days prior to the proposed change or enhancement.

(3) A principal who contravene a provision of subsection (2) is liable to pay to the Bank an administrative penalty of 1000 penalty units.

Miscellaneous Provisions

Regulations

95. (1) The Minister may, after consultation with the Bank by legislative instrument, make Regulations prescribing or making provision for anything which under this Act may be prescribed or provided for by Regulations

(2) Without limiting subsection (1), the Minister may make Regulations to provide

- a) For the payment of fees and charge under this Act;
- b) setting out disciplinary procedures for participants in the operation of a system; and
- c) generally for the effective implementation of this Act.

Rules and guidelines

96. (1) The Bank may by notice make rules:

- (a) for the effective and efficient supervision of established and designated systems;
- (b) for the settlement of dispute in clearing activities;

(2) The Bank may issue guidelines:

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- a) for the procedure for the submission of returns on the operations of payment service providers, electronic money issuers and agents;
- b) for the operations of the clearing house and other retail payment products or channels;
- c) for the operations of large value transfer systems;
- d) for standards on information communication technology security, payment systems equipment and instruments;
- e) procedure for accreditation of printers of payment instruments

Interpretation

97. In this Act, unless the context otherwise requires,

“administration” means a legal process by which a court upon a petition made to it that a company is likely to become insolvent or unable to pay its debts, makes an order appointing an administrator to take charge of the company’s affairs for the proper management of the company in part or in whole with the object of forestalling liquidation, if possible;

“agent” means a natural or legal person that provides agency services to customers on behalf of a principal under an agency agreement;

“agency agreement” means the contractual arrangement between

- i) a principal and an agent;
- ii) a master agent and an agent;

providing banking or electronic money, payment services to end-customers on behalf of the principal;

“agency business” means the provision of banking or electronic money services or payment services to end-customers by an agent on behalf of a principal;

“Agent Due Diligence” means the process of obtaining agent information and verifying or assessing the value of the information from independent and reliable sources for determining the suitability of the agent to provide banking services, electronic money services, payment services, detect, monitor and report suspicious activity or violations of any rules associated with the service provided;

“agent network manager” means an entity to which a principal has outsourced part or all of the operational responsibilities associated with managing its banking or electronic money or payment services agents, including recruitment, training, compliance monitoring, liquidity management, and general support, but does not

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include the direct contractual relationship with the agents, which remains with the principal;

“agent point” means a single location where agency services are provided to customers on behalf of a principal;

“authorisation” means an approval granted by the Bank to banks or specialised deposit-taking institutions to provide payment services;

“Bank” means the Bank of Ghana established under the Bank of Ghana Act, 2002 (Act 612);

“beneficiary” means the final recipient of a transfer for whom the corresponding funds are made available in an account to which the recipient has access;

“beneficiary institution” means a financial institution which acts on behalf of the beneficiary

“biometrics” means an art of identifying an individual based on the individual’s physical behavioural traits namely finger prints, finger vein, voice or palm vein pattern or iris recognition;

“cash-in” means accepting banknotes or coins and performing the necessary steps to initiate the crediting of that monetary value to the customer’s account;

“cash-out” means giving out banknotes or coins and performing the necessary steps to initiate the debiting of that monetary value from the customer’s account;

“certified body” means an organisation accredited by a recognized accrediting body for its competence to audit and issue certification and also confirming that an organization meets the requirements of existing standards;

“Cheque Codeline Clearing” means a process of clearing cheques electronically whereby the physical movement of the cheque is stopped or truncated at the point of deposit for value and replaced by its captured image and Magnetic ink character recognition codeline data or other forms for the rest of the clearing process;

“Clearing sort code” means a unique set of numbers assigned to a bank to facilitate routing of payment transactions from one bank to another bank through the clearing house;

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“complete application” means the submission of all required documents needed to process an application for authorisation or licencing;

“customer due diligence” means the process of obtaining customer information and verifying or assessing the value of the information from independent and reliable sources to identify the customer upfront, and to detect, monitor and report suspicious activity;

“Dedicated Electronic Money Issuers” means a legal person that has been licensed under this Act;

“designation” means a written notification under section 42 subsection (2) addressed to a person who the Bank believes to be an operator of a system and considers to supervise ;

“electronic commerce platform” means a channel that allows consumers to pay for goods and services online;

“electronic money” means monetary value which is stored electronically or magnetically, and represented by a claim on the issuer which is issued on receipt of funds, redeemable against cash and may be accepted by a person;

“electronic money account” means the account held by an electronic money holder with an electronic money issuer for the conduct of electronic money transactions;

“electronic money agent” means an agent contracted to offer electronic money services on behalf of a principal;

“electronic money business” means the issuance, transfer, payment and redemption of electronic money, and any other activity permitted under this Act by the Bank;

“electronic money float” means the total outstanding electronic money liabilities of the electronic money issuer to its customers;

“electronic money holder” means a person who has a claim on an electronic money issuer;

“electronic money issuer” means a payment service provider issuing electronic money;

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“electronic money user” means a person who uses electronic money for making financial transactions;

“escalation process” means a laid down procedure available to a complainant who is not satisfied with the decision reached pursuant to a complaint to seek further consideration of the complaint with an independent higher authority;

“finality” means the confirmation explicitly or implicitly, that a payment or settlement is irreversible and irrevocable;

“financial market infrastructure” means a multi-lateral system among participating institutions used for the purposes of clearing, settling or recording payment, securities, derivatives or other financial transactions;

“fit and proper person” means a person who the Bank has assessed as suitable to hold a particular position on account of the following:

a) probity, competence and soundness of judgment of the person for purposes of fulfilling the responsibilities of that person;

b) the diligence of which that person fulfills or is likely to fulfill those responsibilities;

c) whether the interest of electronic money users or potential electronic money users of the entity are threatened or likely to be, in any way threatened by the person holding that position; and

d) that the integrity of the person is established and the qualifications and experience of the person are appropriate for the position in the light of the business plan and activities of the entity which the person serves, or is likely to serve, taking into account the size, nature and complexity of the institution;

“intermediary institution” means an institution which is either that of the originator or that of the beneficiary and which participates in the execution of a transfer;

“interoperability” means a seamless transfer of payment instructions or funds from an account of one payment service provider or user to the account of another payment service provider or user;

“introduction” means a registered customer of a payment service provider or electronic money issuer testifying about the identity of a non-registered customer to the payment service provider or electronic money issuer or the agent of the payment service provider or electronic money issuer;

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“key management personnel” means a person who takes management decisions in a bank or specialised deposit-taking institution, payment service provider or dedicated electronic money issuer;

“master-agent” means a legal person who has an agreement with a principal to contract and manage agents that provide banking or electronic money services or payment service to customers on behalf of the principal

“material change” means a substantial and continuing change in the provision of a payment or electronic money service that affect the quality and availability of the service;

“material service interruption” means curtailment or suspension of service that prevent a customer from accessing a service lasting for a period of more than one hour;

“merchant” means a commercial establishment which enables a customer to pay for goods and services using payment instruments or electronic money;

“minister” means minister responsible for finance;

“netting” means the determination of the payment obligations between two or more institutions which participate in a system within the scope of this Act or the determination of the net settlement obligations between two or more institutions which participate in the system;

“non-performing borrower” means a natural person who has taken a loan or advances from lender and fails to re-pay after it falls due;

“onboarding” means the process and procedure through which a customer is acquired;

“originator” means a person who orders a transfer of funds to a beneficiary;

“over-the-counter transaction” means a transaction conducted by a customer with a bank or specialised deposit-taking institution or payment service provider or electronic money issuer or the agent of a payment service provider or electronic money issuer without a customer making use of own account;

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“overselling” means where a seller promises a customer that a particular product or service would provide some gains to the customer, where that product or service may not provide those gains;

“participant” means an individual or body corporate who uses the payment system infrastructure;

“payment instrument” means any medium in electronic or written form used for ordering transmission or payment of money;

“payment service” means a provision of service to facilitate transfer of funds from a payer to a payee using various forms of payment instruments or electronic money;

“payment service provider” means a body corporate licensed or authorised under this Act to provide payment service;

“payment system” means procedures, rules, instruments, institutions and infrastructure that facilitate transfer of funds;

“principal” means a bank or specialised deposit-taking institution, payment service provider or electronic money issuer whose services are being conducted through an agent;

“real time” means the electronic processing of transactional data instantaneously;

“settlement” means an act that discharges obligations in respect of funds transfer between two or more participants;

“service level agreement” means a contract between a service provider and a payment service provider or electronic money issuer that defines the level of service expected from the service provider;

“significant shareholding” means a direct or indirect holding which represents five (5) percent or more of the capital or of the voting right;

“suspicious transaction” means a transaction that appears to involve or to be connected to unlawful activity;

“system” means a payment, funds transfer, clearing and settlement arrangement within the meaning of section 43;

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“systemic risk” means a risk arising from the inability of system participant to meet payment obligation under the payment system when it becomes due or any disruption in the system by a participant which may cause other participant to fail to meet their obligations when due and is likely to have an impact on the stability of the payment system or the financial market;

“transfer” means a transaction carried out on the initiative of an originator through an institution with a view to making available an amount of money to a beneficiary;

Repeals and savings

98. (1) The Payment Systems Act, 2003 (Act 662) is repealed.

(2) Anything made or prescribed or done under Act 662 immediately before the commencement of this Act shall continue to be valid and remain in force as far as it is consistent with this Act until it is altered under this Act.

Transitional provision

99. (1) Any payment and settlement system in existence before commencement of this Act shall continue to operate subject to the provisions of this Act.

(2) Existing electronic money issuers and payment service providers shall apply for authorisation or licence under this Act within nine (9) months of the coming into force of this Act.